3.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~185.~~ 41

THE CITY OF CHICAGO, APPELLANT,

VS.

GEORGE T. BIGELOW, ADMINISTRATOR OF NICHOLSON, DECEASED.

PETITION AND MOTION TO DISMISS.

FILED DECEMBER 23, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 183.

THE CITY OF CHICAGO, APPELLANT,

vs.

GEORGE T. BIGELOW, ADMINISTRATOR OF NICHOLSON, DECEASED.

PETITION AND MOTION TO DISMISS.—FILED DECEMBER 23, 1868.

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1 Supreme Court United States.

GEORGE T. BIGELOW, ADMINISTRATOR, &c., OF Samuel Nicolson, deceased, *ads.* THE CITY OF CHICAGO.

And now, at this day, comes the said appellee, George T. Bigelow, administrator, &c., of the said Samuel Nicolson, deceased, he having, pursuant to the rules and practice of this court, become a party to said suit on appeal, and moves this honorable court to dismiss the said appeal of the city of Chicago aforesaid, for want of jurisdiction upon the record, and an affidavit herewith filed. And the said mover shows for cause that it appears by the record of the court of the northern district of Illinois, in chancery, filed in this cause, the said appellant never
2 prayed for an appeal in said last-mentioned court from the said decree therein, and that no appeal was allowed therein.

Dated, , 1869.

GOODWIN, LARNED AND TOWLE,
Solic's for Appellee.

MATT. H. CARPENTER, Esq., *of Counsel.*

3 (Indorsed:) U. S. Supreme Court. 183. Dec. T., 1868. George T. Bigelow, administrator, &c., ads. the city of Chicago. Motion for dismissal of appeal.

Filed 1 April, 1869.

4 Supreme Court United States.—December term, A. D. 1868.

GEORGE T. BIGELOW, ADMINISTRATOR, &c., OF Samuel Nicolson, deceased, *ads.* THE CITY OF CHICAGO.

SIR: You will please take notice that a motion has been filed and entered in the above-entitled cause, a copy of which, with a copy of the affidavit therein referred to, is herewith served upon you, and that the said motion will be called up for final disposition on Friday, the 9th day of April, A. D. 1869, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated, Apr. 1st, 1869.

Yours, &c.,

GOODWIN, LARNED AND TOWLE,
Solicitors for Appellee.

To S. A. IRWIN, Esq., *Sol'r and Counsel for the City of Chicago*; and
To Hon. J. B. RICE, *Mayor of the City of Chicago.*

5 Supreme Court of the United States.

GEORGE T. BIGELOW, ADMINISTRATOR OF, &c., of Samuel Nicolson, deceased, *ads.* THE CITY OF CHICAGO.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Henry S. Towle, of the city of Chicago, being duly sworn, says that on the first day of April, 1869, he personally served upon S. A. Irwin,

esq., the solicitor and counsel for the said appellant, the city of Chicago, a copy of the annexed notice, together with a copy of the motion therein referred to, and a copy of the affidavit of E. C. Larned, filed on said motion; and that on the 2d day of April, 1869, he personally served a like copy of said notice, motion, and affidavit upon Hon. J. B. Rice, the mayor of said city; that said Irwin has been throughout the solicitor for the said city in this cause, both in the court below and acting as such with the solicitors for the appellee on the appeal therein to the Supreme Court of the United States; that said Irwin is the official corporation
6 counsel of the said city of Chicago, holding his appointment as such from the mayor and common council of said city.

HENRY S. TOWLE.

Sworn and subscribed this 2d day of April, A. D. 1869, before me.
[SEAL.] SAM'L W. PEASE, *Notary Public.*

(Indorsed:) U. S. Supreme Court. December term, A. D. 1868. No. 183. George T. Bigelow, administrator, &c., ads. the city of Chicago. Notice, with proof of service.
Filed 9 April, 1869.
Goodwin, Larned and Towle, sol'rs for appellee.

7 Supreme Court of the United States.

GEORGE T. BIGELOW, ADMINISTRATOR OF SAMUEL NICOLSON, deceased,
ads.
THE CITY OF CHICAGO.

Edwin C. Larned on oath deposes and says that he is an attorney at law, and resides in the city of Chicago, in State of Illinois; that he is one of the firm of Goodwin & Larned, who were the attorneys of the late Samuel Nicolson, in the case of said Nicolson vs. the city of Chicago, in the circuit court of the United States for the northern district of Illinois.

That he has compared the copy of the final decree rendered in said cause on the 7th day of Janu'y, A. D. 1867, as the same is found on page 37 of the printed copy of record of the case in this court, with the original record of such final decree now remaining of record in said circuit court, and that the said printed copy of record correctly sets forth the said decree; and that he has carefully examined the records of said court in said case subsequent to said final decree, and that there is nothing appearing on the said original records of said cause in said court subsequent to said final decree which is not contained in the said printed copy of record. And that it nowhere appears in the
8 original records of said case in the said circuit court that any appeal from the said final decree was ever prayed by the said city of Chicago or ever allowed by the said circuit court.

And this affiant further states that he personally consulted with William H. Bradley, clerk, & Hon. Thomas H. Drummond, judge, of said circuit court, on or about the 22d day of February, A. D. 1869, and was informed by each of the said parties, that according to their best recollection, that no appeal was ever prayed by the city in said cause, or allowed by the court from said final decree; and that the counsel for the city in said case was not in court at the time the said final decree therein was entered.

And further this affiant saith not.

EDWIN C. LARNED.

Subscribed and sworn to before me this 29th day of March, A. D. 1869.

[SEAL.] HENRY S. TOWLE, *Notary Public.*

9 (Indorsed:) U. S. Supreme Court. Dec. term, 1869. No. 183. George T. Bigelow, administrator, &c., ads. the city of Chicago. Affidavit of E. C. Larned.

Filed 9th April, 1869.

10 Supreme Court of the United States.

THE CITY OF CHICAGO
vs.
GEORGE T. BIGELOW, ADMINISTRATOR, &c., OF Samuel Nicolson, deceased.

UNITED STATES OF AMERICA, *ss:*

11 Samuel A. Irvin on oath deposes and says that he is counsel to the corporation of city of Chicago, and was on and for some time prior to the seventh day of January, A. D. 1867, and that, as such counsel, and as solicitor for the said city, deponent attended to the taking the evidence on the reference to the master to compute and ascertain the damages alleged to be due and owing by the city to one Samuel Nicolson for an alleged infringement of a certain patent right for an improved wooden pavement invented by the said Nicolson, and was also, as such counsel & solicitor, served with and accepted notice that complainant, by his solicitor, would apply to the circuit court for northern district of Illinois, on the 7th day of January, A. D. 1867, for the entry, by said court, of the final decree in said suit.

Deponent further, on oath, says that, according to his best recollection, he did attend and was present in said court at the time named in said notice, and was personally present when the order was made, vis., the seventh day of January, A. D. 1867 (being one of the days of the December term, 1866, of said court), for the entry of the final decree in said cause, and that S. A. Goodwin, esq'r. (of firm of Goodwin & Larned), was present as solicitor for Nicolson, but that E. S. Larned, esq'r, the other member of said firm, was not present.

Deponent further says that, according to his best recollection,
12 at the time last aforesaid, vis., at the entry of the order for final decree, or at a subsequent time and before the 17th day of January, A. D. 1867, and at aforesaid December term, and in court, the following proceedings or transactions in substance took place, vis:

That this deponent remarked to said court that the city desired to appeal from said decree to the Supreme Court of the United States, and that the court said the appeal will be allowed on the presentation and approval of the appeal bond, or words of like import; that deponent at the said time asked the court to fix the penalty of said bond, which the court then did, vis., in the sum of forty thousand dollars; that something was said about the sureties, and that this deponent suggested that he would have to consult with the city comptroller, or other city officials, before he could name them.

Deponent further, on oath, says that soon thereafter an appeal bond in the penalty aforesaid was executed by the proper city officers, and by C. G. Wicker & C. C. P. Holden, as sureties, and presented to one of the firm of Goodwin & Larned, solicitors of complainant, Nicolson, and their approval endorsed thereon in these words, vis:

And the firm name signed thereto in the handwriting of

Deponent further, on oath, says that thereafter he took the said bond, thus executed, and presented the same to his hon. Thomas Drummond, the judge presiding in said court, and that his honour approved
13 the same on the 16th day of January, A. D. 1867 (being within ten days after entry of the final decree), and being one of the days of the December term, A. D. 1866, of s'd court, and endorsed his approval thereon, and that this deponent then and there filed the said bond with the clerk of said court, who endorsed thereon the filing the said bond on the 16th day of January, A. D. 1867.

Deponent further says that it is his best recollection and firm belief that, at or before the time of the approval of said bond by the said judge, and the filing by the said clerk, that the appeal herein was or had been duly allowed by the court, that they severally understood, believed, and acted upon the full faith that an appeal had been prayed and allowed, and this deponent distinctly recollects that such was then his conviction, & that he acted on such belief and conviction.

Deponent further, on oath, says that said appeal was taken in good faith, and with the bona-fide intention of prosecuting the same to final hearing and determination in the Supreme Court of U. S., and that such is still the purpose.

Deponent further, on oath, says that, early in the year 1867, or before then, the Hon. B. R. Curtis, of Boston, Massachusetts, was retained on the part of the city to attend to and argue the said cause in the Supreme Court of the United States, and that thereafter this deponent (not professing to be a patent lawyer) neither did nor designed to give the said cause any special attention in the said last court.

Deponent further, on oath, says that the first notice or knowl-
14 edge he had that the transcript of the record filed in said Supreme Court, or the printed copy thereof, contained no entry of a prayer for, or an allowance of, an appeal, was on or about the 26th day of March, A. D. 1869, while engaged in the midst of an important trial in the superior court of Chicago on behalf of said city, and which engrossed deponent's whole time & attention until the evening of March 31st, 1869; that as soon thereafter as possible for him to do so, to wit, on April 1st, A. D. 1869, he examined the files and records of the said circuit court pertaining to said cause, and found that no entry of the prayer or allowance of an appeal had been entered by the clerk of said court in said suit.

That deponent also then and there inquired of Mr. Bradley, the clerk of said court, in relation to the matter, and was distinctly informed by him that he had no distinct recollection, one way or the other, as to whether such appeal had been in fact formally prayed or allowed by the court or not, nor whether this deponent was personally present or not in the court when the order for entering the final decree was made, but that he did recollect that, either at that time or before the approval of the bond herein, deponent did, in court, during the term, state to the court that the city desired to take an appeal, and that then and there the penalty of the same was fixed by the court, and that it was his understanding and belief that all was done required by law at said time, except the approval of the bond, & when the same was approved he understood said appeal to be perfected.

Deponent further states that he verily believes that Messrs. Goodwin & Larned, solicitors for Nicolson, understood that such appeal had been

properly taken, and, when the facts about the same were more clearly & distinctly recollected by all parties than now, acted on such understanding & belief, if not knowledge, and continued to so understand, believe, and act up to a very recent date, vis., until the discovery was made by some one that the printed copy of the record contained
15 no such entry; and deponent, in corroboration of such belief, states the facts to be that the said Goodwin & Larned entered their appearance as solicitors of the said appellee, Nicolson, in the Supreme Court of the United States, after the filing of the transcript of the record therein, and that thereafter, vis., about the 15th of February, A. D. 1869, Mr. Goodwin, one of the appellee's solicitors, having for some time befor, & being then confined to his house by sickness, sent for this deponent to come & see him .and that deponent did, about said time, go in compliance with said request, and that said Goodwin, after detailing his sickness and trouble, asked the favor of this deponent to enter into a stipulation to continue the said cause in the said Supreme Court until the December term, A. D. 1869, as well as a motion entered therein before then by Judge Curtis, and that this deponent, under the circumstances, believing it to be right so to do, did enter into such stipulation; and that deponent has been informed by the clerk of said Supreme Court, and verily believes, said stipulations was filed among the papers in the said suit in the said court on the 18th day of February, A. D. 1869, and on examination of the files finds such to be the facts. And also that the death of said Nicolson was suggested, and George T. Bigelow, the administrator, &c., made a party, pursuant to the rules and practice of said Supreme Court, by the solicitors of the appellee.

Deponant further, on oath, says that he verily believes that the clerk of said circuit court for the northern district of Illinois, by inadvertance, failed to make the entry of the prayer and allowance of appeal in the said suit, both upon his minute book & record.

SAM'L A. IRVIN.

Sworn to in open court this 9th day of April, 1869.

D. W. MIDDLETON, *C. S. C. U. S.*

16 (Indorsed:) Supreme Court of U. S. Dec. term, 1868. No. 183. The city of Chicago vs. George T. Bigelow, administrator, &c. Affidavit of S. A. Irvin.

Filed 9th April, 1869.

17 No. 183.—Supreme Court of the United States.—December term, 1868.

THE CITY OF CHICAGO
vs.
SAMUEL NICHOLSON.

To the honorable the Chief Justice & associate justices of the Supreme Court of the United States:

Respectfully shows unto your honors, the city of Chicago, the appellant in the above-entitled cause, now pending in this honorable court—

1st. That on the ninth day of November, 1864, the appellee filed his bill in the circuit court of the United States for the northern district of Illinois, wherein he complained that the appellants had infringed certain reissued letters patent, numbered 1,583, & bearing date on the first day of December, 1863, & praying for an injunction to restrain the appel-

lants from further infringing the same, & for an account of profits by the appellants received by reason of such infringements.

18 2d. That such proceedings were had in the said court that, on the seventh day of January, 1867, a final decree was made by the said court, whereby the appellants were enjoined from infringing the said patent, & were ordered to pay to the appellee the sum of twenty-nine thousand seven hundred & thirty $\frac{30}{100}$ dollars, as & for the profits by appellants received from the infringement of the said patent.

3d. That from the said final decree the appellants claimed an appeal, which was perfected on the sixteenth day of January, 1867, & such appeal was duly entered in this court at the December term thereof, which was in the year 1867, & has been since here depending; which said several matters appear in & by the transcript of the record now on file in the said cause in this honorable court.

4th. That the appellants are now informed, & so aver & give this honorable court to understand, that on the twentieth day of August, 1867, after the said appeal had been perfected, but before the same had

19 been entered in this honorable court, the said appellee duly & effectually surrendered the said patent, &, upon such surrender, obtained new letters patent upon an amended specification, a duly authenticated copy of the said proceedings of surrender & reissue being hereto annexed; & thereby did finally & effectually extinguish & release all claims upon the appellants for any & all the monies so decreed to be paid by the said circuit court as aforesaid, & did necessarily terminate the injunction not to infringe the patent so surrendered, & that in consequence thereof any & all questions, whether of law or fact, involved in the said appeal, became & now are terminated. And the said appellants pray the judgment of this honorable court, whether it will proceed further in the said cause, & move for such order in the premises as to this honorable court may seem meet.

B. R. CURTIS,
Of Counsel with Appellant.

(Indorsed:) Chicago vs. Nicholson.

20 *(In pencil:)* Curtis.

The U. States [coat of arms] Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office.

In testimony whereof, I, Elisha Foote, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighteenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL.] ELISHA FOOTE.

21 To the Commissioner of Patents of the United States of America:

The petition of Samuel Nicolson, of Boston, in the State of Massachusetts, respectfully represents:

That on the eighth day of August, in the year one thousand eight hundred and fifty-four, your petitioner did obtain letters patent of the United States for an improvement in wooden pavements, and that on the first day of December, in the year one thousand eight hundred and sixty-three,

your petitioner surrendered the last-mentioned patent on account of a defective specification, and there were issued to him new and reissued letters patent of that date for the same invention on an amended specification, and for your petitioner's said improvement in wooden pavements; that your petitioner now believes that the said last-mentioned new and reissued letters patent are inoperative to secure to your petitioner, the said patentee, the whole of the actual invention of your petitioner, Samuel Nicolson, the inventor, by reason of a defective and insufficient specification, which error has arisen by inadverteney, accident, and mistake, and without any fraudulent or deceptive intention.

22 Your petitioner therefore prays that he may be allowed to surrender the said last-mentioned reissued letters patent, and that new letters patent may issue to him for the same invention for the residue of the period for which the original letters patent were granted, under the amended specifications herewith presented; your petitioner having paid thirty dollars into the treasury of the United States agreeably to the requirements of the acts of Congress in that case made and provided. And, &c.,

SAMUEL NICOLSON.

Ex'd, A. T.

(Indorsed:) Rec'd & filed Aug. 2, 1867.

23 *(In pencil:)* Curtis, $12 35.

The U. States [coat of arms] Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissued letters patent granted Samuel Nicolson, dated 20th August, 1867, No. 2748.

In testimony whereof, I, Elisha Foote, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighteenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL.] ELISHA FOOTE.

24 No. 2748. Reissue.

THE UNITED STATES OF AMERICA.

[Design by the National Bank Note Company, New York.]

To all to whom these letters patent shall come:

Whereas Samuel Nicolson, of Boston, Massachusetts, has alleged that he has invented a new and useful improved wooden pavement (for which letters patent were issued to him dated August 8, 1854, the same surrendered, and new letters issued to him dated December 1, 1863, which last letters having been surrendered by him, the same have been cancelled, and new letters ordered to issue to him on an amended specification), which he states has not been known or used before such invention; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said invention, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

lants from further infringing the same, & for an account of profits by the appellants received by reason of such infringements.

18 2d. That such proceedings were had in the said court that, on the seventh day of January, 1867, a final decree was made by the said court, whereby the appellants were enjoined from infringing the said patent, & were ordered to pay to the appellee the sum of twenty-nine thousand seven hundred & thirty $\frac{30}{100}$ dollars, as & for the profits by appellants received from the infringement of the said patent.

3d. That from the said final decree the appellants claimed an appeal, which was perfected on the sixteenth day of January, 1867, & such appeal was duly entered in this court at the December term thereof, which was in the year 1867, & has been since here depending; which said several matters appear in & by the transcript of the record now on file in the said cause in this honorable court.

4th. That the appellants are now informed, & so aver & give this honorable court to understand, that on the twentieth day of August, 1867, after the said appeal had been perfected, but before the same had

19 been entered in this honorable court, the said appellee duly & effectually surrendered the said patent, &, upon such surrender, obtained new letters patent upon an amended specification, a duly authenticated copy of the said proceedings of surrender & reissue being hereto annexed; & thereby did finally & effectually extinguish & release all claims upon the appellants for any & all the monies so decreed to be paid by the said circuit court as aforesaid, & did necessarily terminate the injunction not to infringe the patent so surrendered, & that in consequence thereof any & all questions, whether of law or fact, involved in the said appeal, became & now are terminated. And the said appellants pray the judgment of this honorable court, whether it will proceed further in the said cause, & move for such order in the premises as to this honorable court may seem meet.

B. R. CURTIS,
Of Counsel with Appellant.

(Indorsed:) Chicago vs. Nicholson.

20 *(In pencil:)* Curtis.

The U. States [coat of arms] Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office.

In testimony whereof, I, Elisha Foote, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighteenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL.] ELISHA FOOTE.

21 To the Commissioner of Patents of the United States of America:

The petition of Samuel Nicolson, of Boston, in the State of Massachusetts, respectfully represents:

That on the eighth day of August, in the year one thousand eight hundred and fifty-four, your petitioner did obtain letters patent of the United States for an improvement in wooden pavements, and that on the first day of December, in the year one thousand eight hundred and sixty-three,

your petitioner surrendered the last-mentioned patent on account of a defective specification, and there were issued to him new and reissued letters patent of that date for the same invention on an amended specification, and for your petitioner's said improvement in wooden pavements; that your petitioner now believes that the said last-mentioned new and reissued letters patent are inoperative to secure to your petitioner, the said patentee, the whole of the actual invention of your petitioner, Samuel Nicolson, the inventor, by reason of a defective and insufficient specification, which error has arisen by inadvertency, accident, and mistake, and without any fraudulent or deceptive intention.

22 Your petitioner therefore prays that he may be allowed to surrender the said last-mentioned reissued letters patent, and that new letters patent may issue to him for the same invention for the residue of the period for which the original letters patent were granted, under the amended specifications herewith presented; your petitioner having paid thirty dollars into the treasury of the United States agreeably to the requirements of the acts of Congress in that case made and provided. And, &c.,

SAMUEL NICOLSON,

Ex'd, A. T.

(Indorsed:) Rec'd & filed Aug. 2, 1867.

23 *(In pencil:)* Curtis, $12 35.

The U. States [coat of arms] Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissued letters patent granted Samuel Nicolson, dated 20th August, 1867, No. 2748.

In testimony whereof, I, Elisha Foote, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighteenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL.] ELISHA FOOTE.

24 No. 2748. Reissue.

THE UNITED STATES OF AMERICA,

[Design by the National Bank Note Company, New York.]

To all to whom these letters patent shall come:

Whereas Samuel Nicolson, of Boston, Massachusetts, has alleged that he has invented a new and useful improved wooden pavement (for which letters patent were issued to him dated August 8, 1854, the same surrendered, and new letters issued to him dated December 1, 1863, which last letters having been surrendered by him, the same have been cancelled, and new letters ordered to issue to him on an amended specification), which he states has not been known or used before such invention; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said invention, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are, therefore, to grant, according to law, to the said Samuel Nicolson, his administrators, or assigns, for the term of fourteen years from the eighth day of August, one thousand eight hundred and fifty-four, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention, a description whereof is given in the schedule hereunto annexed and made a part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office to be hereunto affixed. Given under my hand, at the city of Washington, this twentieth day of August, in the year of our Lord one thousand eight hundred and [L. S.] sixty-seven, and of the independence of the United States of America the ninety-second.

O. H. BROWNING,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

T. C. THEAKER,
Commissioner of Patents.

[Here follows maps, marked Nos. 1 & 2, page 24.]

25 UNITED STATES PATENT OFFICE:

Samuel Nicolson, of Boston, Massachusetts.—Letters patent No. 11,491, *dated August* 8, 1854; *reissue No.* 1,583, *dated December* 1, 1863; *reissue No.* 2,748, *dated August* 20, 1867.—*Improved wooden pavement.—The schedule referred to in these letters patent and making part of the same.*

To all whom it may concern:

Be it known that the following is a full, clear, and exact description of the new and useful improved wooden pavement, invented by me, Samuel Nicolson, of Boston, in the State of Massachusetts, and for which letters patent were granted to me on the eighth day of August, in the year of our Lord one thousand eight hundred and fifty-four, and for which new and reissued letters patent were granted to me on the first day of December, in the year of our Lord one thousand eight hundred and sixty-three, the said last-mentioned letters patent having been surrendered for the purpose of describing the same invention, and pointing out in what it consists, in more clear, full, and exact terms than was done in the said original or amended specifications.

The nature and object of my invention consist in providing a process or mode of constructing wooden-block pavements upon a foundation along a street or roadway, with facility, cheapness, and accuracy; and also in the creation and construction of such a wooden pavement for streets and roadways as shall be comparatively permanent and durable, by so uniting and combining all its parts, both superstructure and foundation, as to provide against the slipping of the horses' feet, against noise, against unequal wear, and against rot on or from the top surface, and against rot and consequent sinking away from below.

For a clear understanding of the manner of constructing my improved wooden pavement, I refer to the accompanying drawings, with corresponding letters of reference, making part of these specifications, of which drawings—

No. I, Figure 1, represents a top view of the first plan of said pavement; and

Figure 2 of the same drawing represents a transverse and vertical section of the same; and

Figure 1 of drawing No. II represents a perspective view of the said pavement, constructed and in the process of construction, after the second plan or modification; and

Figure 2, drawing No. II, a further perspective view of a section of the said pavement on the first plan; and

Figure 3, drawing No. II, a further perspective view of a section of the said pavement on the second plan.

The earth of a roadway, upon which my improved wooden pavement of either plan is to be constructed, must first be suitably graded in any of the usual and well-known methods, in order to prepare it for the reception of such pavement. When the street or roadway has thus been prepared for the reception of my pavement, I then cover the surface of the roadway or bed with tarred paper, or with hydraulic cement, laid over it about two (2) inches in thickness; or with a cheap flooring of boards or plank, which may also be covered with tar on one or both sides, by swabbing or by dipping the boards or plank; or any other preventive to moisture may be used in connection with said foundation or support, the object and effect of such foundation being the support afforded such pavement, and to prevent the absorption of moisture from the ground by the wooden blocks. Said foundation is designated in said drawing by the letters *d d*.

In further carrying out my invention, I employ two (2) sets of blocks, or a set of blocks and strips. The one set of blocks, which may be called the principal set of blocks, forms, when the pavement is completed, the wooden surface of the pavement, and the other or auxiliary set of blocks or strips, forms no part of the wooden surface of the pavement, but determines the size of the groove or channel-way between the principal blocks, which is afterwards to be filled with broken stone, gravel, and tar. While the principal set of blocks must be of uniform height, and of suitable texture to form a proper surface for the pavement, the auxiliary set need be of no particular height or texture, but they must not permanently and entirely fill the grooving intended for the gravel, broken stone, and tar, when the pavement is completed.

The principal set of blocks is cut with parallel sides, lines, or surfaces, from joist or timber about four inches square, or of other suitable shape and dimensions, in cross-sections, being made eight inches in length. The auxiliary blocks may be formed of about half the length of the others, but they must be of such thickness or cross-section as to form the proper boundary of the groove.

The principal blocks are placed end upwards upon said foundation or support, and are arranged both transversely and longitudinally, so that the principal and the auxiliary blocks shall be arranged alternately in each direction, or run as seen in the drawings. By such an ar-
26 rangement spaces or cells *c c c* between the principal blocks are formed, each of said cells being bounded by four of the principal blocks. The upper ends of the principal blocks, when thus placed together, present a checkered or tessellated appearance, and they will exhibit the open spaces arranged together in a similar manner. Into each of these cells a small quantity or layer of coarse salt may be put. These cells are filled up with small broken stone, or coarse, clean gravel, the whole being firmly rammed, so that the upper surface of the mass shall be firm and level.

Next, mineral or vegetable tar or pitch is to be poured over the whole surface of the pavement, and into the cells or cavities containing the

broken stone, or gravel, so as to penetrate entirely between the pieces of stone, or gravel, and cement them together. The tar penetrating into the squares containing the broken stone, or gravel, will cause the masses of the stone to adhere firmly to the surrounding blocks, and will admit of expansion of the mass by the weight of the wheels of carriages in passing over them, such expansion serving to fill up the space which might otherwise be made by shrinkage of the wooden blocks.

In order to prevent the blocks from being forced below one another in some of my modes of constructing the pavement, they may be pinned together with wooden pins, extending from block to block.

Instead of the broken stone and tar, any other suitable cementing material may be employed in the cells. I prefer, however, common tar or pitch, and gravel or broken stone, as such in practice has been found to operate to great advantage, and to be very durable in use, and to present a surface on which it is very difficult for horses to slip or slide, as is frequently the case in ordinary pavements when the surface is wet or covered with mud.

The auxiliary strip may be about half the height of the principal block, but it must not be permitted to fill up the grooves permanently and entirely when the pavement is completed, or to form any part of the surface of the pavement.

My invention may be carried out in another form, that is to say, upon the plan or second modification seen in Fig. 1 and Fig. 3 of drawing No. II. The principal blocks are arranged side by side, transversely of the roadway, alternately with strips of board, edgewise or vertical, in thickness about one-third of the principal blocks, placed transversely upon the foundation or support, and in this mode of construction so arranged as to form spaces of about one inch in thickness between the rows of principal blocks.

I would remark, as to the durability of my pavement, that, for the purpose of experiment, I have had some of it in use for six years before the month of March, eighteen hundred and fifty-four, on a road on which the travel has been very great.

Some of the advantages of my pavement are to be found in the hold that it offers for the feet of horses; in the little noise that it produces while carriages are passing over it, the absence of noise resulting from the peculiar character of the material of which the pavement is composed.

This pavement is also very durable; its durability being occasioned by the friction of the travel over it being produced upon the slightly elastic extremities of the fibres of the wooden blocks, and by its solidity and durable material in the filling.

Moisture is excluded from the wood by the materials employed for the support of the blocks; also by the preventives; also by the tarry covering which is placed over the top surface, as hereinbefore described.

My pavement has the advantage of great cleanliness, in comparison with most other pavements; because, in the first place, as there is very little wear of its upper surface, very little dirt is likely to form upon it, and such as does form is quickly removed therefrom by rains and winds.

There is a further advantage in respect to facility, cheapness, and accuracy in the process or method of forming the channels, grooves, or receptacles required for the desired filling in my improved construction, which results from two sets or series of parallel-sided blocks (or blocks and strips of board), employed as above mentioned.

By this method of forming such channels, grooves, or receptacles, the parallelism of the same, and of the principal blocks forming the ultimate

surface of the pavement, and the uniformity in width or size and distance, one from another, of such channels, grooves, or receptacles, is effected in a cheap, simple, and expeditious manner directly upon the prepared foundation resting upon the roadway, and any necessity of constructing the pavement in portable compartments is avoided.

Having thus fully described the parts and combination of parts, and the operation of my improved wooden pavement, and shown various modes in which the same may be constructed and made to operate, without changing the principle of its construction and operation, I claim, as an improvement in the art of constructing pavements—

1. Placing a continuous foundation or support, as above described, directly upon the roadway; then arranging thereon a series of blocks, having parallel sides, endwise in row, so as to leave a continuous narrow groove or channel-way between each row, and then filling said grooves or channel-ways with broken stone, gravel, and tar, or other like materials.

2. I claim the formation of a pavement by laying a foundation directly upon the roadway, substantially as described, and then employing two sets of blocks; one a principal set of blocks, that shall form the wooden surface of the pavement when completed, and an auxiliary set of blocks, or strips of board, which shall form no part of the surface of the pavement, but determine the width of the groove between the principal blocks, and also the filling of said groove, when so formed between the principal blocks, with broken stone, gravel, and tar, or other like material.

3. Placing a continuous foundation or support, as above described, directly upon the roadway, and then arranging thereon a series of blocks having parallel sides endwise in a checkered manner, so as to leave a series of checkered spaces or cavities between said blocks, and then filling said checkered cavities with broken stone, gravel, and tar, or other like material.

27 4. I claim the formation of a pavement by laying a foundation directly upon the roadway, substantially as above described, and then employing two sets of blocks, viz., one a principal set of blocks, that shall form the wooden surface of the pavement, and an auxiliary set of blocks, that shall form no part of the wooden surface of the pavement, but determine the dimensions of the tessellated cavities between the principal blocks, and then filling said tessellated cavities with broken stone, gravel, and tar, or other like material.

SAMUEL NICOLSON.

Witnesses:
STEPHEN A. GOODWIN.
DANIEL SHARP.
CHAS. F. THAYER.

(Indorsement:) Supreme Court U. S. 1868, Dec. term. No. 183. The city of Chicago vs. Nicholson. Petition & motion.

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